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DOCKET FILE COPY ORIGINAL

August 14, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Room 222/Stop Code 1170
Washington, D.C. 20554

Re: IB Docket No. 98-118, 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations

Dear Ms. Salas,

On August 13, 1998, MCI Telecommunications Corporation filed Comments in the above captioned proceeding. While the original version filed with you was complete, the filed copies were inadvertently missing page 9.

I have therefore enclosed eight copies of the comments containing page 9. Also attached is a copy of the Comments on diskette in Word Perfect 5.1.

Very truly yours,

Scott A. Shefferman

cc: The Honorable William Kennard
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani
The Honorable Michael Powell
The Honorable Susan Ness
Regina M. Keeney
Diane J. Cornell
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Douglas Klein
Leon M. Kestenbaum
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ITS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review --	)	IB Docket No. 98-118
Review of International Common Carrier	)	
Regulations	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORP.

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August 13, 1998

Summary

MCI applauds the Commission's efforts to streamline and simplify its international Section 214 application rules. MCI believes that many of the Commission's streamlining proposals would further the public interest because they simplify the section 214 application process for U.S. carriers, ultimately benefiting consumers in the United States. Accordingly, MCI supports the proposals and tentative conclusions made by the Commission in its Notice of Proposed Rulemaking with one exception - the issue of whether Section 214 applicants should list all 10 percent or greater shareholders in their applications.

Specifically, MCI supports the Commission's proposal to grant blanket Section 214 authorization to all carriers seeking to provide service to unaffiliated international points, but believes blanket authorization should not be applied to applicants seeking to provide international service from any region in the United States in which the applicant maintains bottleneck control over local facilities and services.

MCI also fully supports the Commission's proposals to forebear from prior approval requirements for pro forma assignments and transfers of control, to adopt a presumption that U.S. carriers may use non-U.S.-licensed cable systems, to eliminate the separate Section 214 application requirement for authority to construct and operate a submarine cable, and to amend and reorganize Part 63 of its rules.

MCI also supports the Commission's proposal to amend its rules to provide that a Section 214 authorization effectively authorizes the carrier to provide service through its wholly-owned subsidiaries, but urges the Commission to clarify that such an authorization also effectively authorizes provision of service through a "sister" subsidiary. Moreover, MCI supports the

Commission's proposal to streamline its procedures for authorizing ISR to particular countries. MCI submits that, rather than requiring carriers to file a petition for declaratory ruling, the Commission should grant an automatic blanket authorization to provide ISR to WTO countries where at least 50 percent of the settled U.S.-billed traffic on the route is at benchmark settlement rate levels.

Finally, MCI urges the Commission not to amend its rules to require Section 214 applicants to list only their shareholders with a greater than 25 percent ownership interest, rather than listing every 10 percent or greater shareholder. Raising the ownership interest levels that must be provided in Section 214 applications will eliminate burdens on applicants only marginally, if at all, while at the same time undermining the Commission's policy of scrutinizing, in certain circumstances, foreign investments in applicants of 25 percent or less.

Before the
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In the Matter of	)	
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Regulations	)	

COMMENTS

MCI Telecommunications Corporation ("MCI") hereby files these Comments in response to the Notice of Proposed Rulemaking ("*Notice*") released by the Commission on July 14, 1998 in the above-captioned proceeding.[1] In its *Notice*, the Commission makes a number of proposals to streamline and simplify its international Section 214 application rules.

MCI applauds the Commission for taking these important steps towards deregulating the international services market. MCI supports the Commission's proposals, with one exception - the issue of whether Section 214 applicants list all 10 percent or greater shareholders in their applications. In general the amended rules, if adopted, will greatly simplify the Section 214 application process and make it easier to understand the rules applicable to authorized international carriers in the United States. MCI's specific comments in response to each of the Commission's proposals are set forth below.

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[1] *1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations*, IB Docket No. 98-118, Notice of Proposed Rulemaking, FCC 98-149 (rel. July 14, 1998).

I. BLANKET SECTION 214 AUTHORIZATION

The Commission proposes granting blanket authorization to provide international services on unaffiliated routes.[2] The Commission tentatively concludes that regulatory safeguards are sufficient to address concerns associated with international 214 applications to provide service on unaffiliated routes. The Commission thus proposes to "certify that it would serve the public interest, convenience and necessity to allow any entity that would be a non-dominant carrier to provide facilities-based service, or to resell the international services of other carriers, to any international point except a market in which an affiliated carrier operates."[3]

The Commission seeks comment on several specific issues related to the proposal. For example, the Commission asks whether there is a smaller or larger class of carriers or services for which blanket authorization would be appropriate, or whether there remain any public interest considerations that might warrant denying an authorization to provide facilities-based service to a foreign market where the applicant has no affiliate.[4] The Commission also seeks comment on whether it is possible to identify a class of affiliations that can be included in a blanket authorization.[5]

MCI supports the proposal to grant blanket authorization to carriers seeking to provide service to any unaffiliated international point. MCI agrees that such streamlining would

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2 *Notice* at ¶ 8.

3 *Id.*

4 *Id.* at ¶ 9.

5 *Id.*

eliminate delay and would reduce processing burdens on the Commission. It is critical, however, that the Commission preserves its ability to revoke or condition such authorizations. MCI therefore supports the Commission's tentative conclusion that it grant a blanket authorization rather than forebear from requiring international section 214 authorization.

MCI urges the Commission to require carriers to notify the Commission that they are providing international services pursuant to a blanket 214 authorization. Absent such notification, the Commission would be unable to identify numerous carriers providing international services in the United States, and would be unable to enforce its rules applicable to all authorized providers of international services. Each notification should state that the notifying carrier has begun providing international service in the United States and should be filed at the Commission within 10 days of initiating service.

The International Bureau should publish a Blanket Section 214 Authorization List on a regular basis based on the notifications it receives to assist the public in monitoring carriers that have begun to provide international services in the United States. The list of notifications, for example, could be similar to the regular Public Notices currently released by the International Bureau granting applicants international Section 214 authorization.[6] Even with the addition of a Blanket Authorization Public Notice, the burdens on the Bureau staff would be significantly reduced because the majority of current Section 214 applicants would be subject to blanket

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[6] *See, e.g.*, Public Notice, Report No. I-8322, *Overseas Common Carrier Section 214 Applications Actions Taken*, DA 98-1472 (July 23, 1998).

authorization under the Commission's proposed rule and would therefore not be placed on the Public Notice of Section 214 Applications Accepted for Filing.

The Commission should not, however, broaden the class of carriers subject to blanket authorization beyond non-foreign-affiliated carriers. The Commission should take an incremental approach toward streamlining. Because applicants' foreign affiliations can raise unique concerns, it would be contrary to the public interest to deny the Commission and other parties an opportunity to consider such applications prior to the foreign-affiliated carrier beginning service. The majority of these applications will likely become effective 35 days after being placed on public notice without requiring the Commission to issue a separate order. The Commission should therefore require all carriers with a foreign affiliation, including affiliations with a wireless carrier in the foreign market, to file a separate 214 application, whether for facilities-based or resale services, to serve the affiliated route.

Moreover, the Commission should exclude from blanket authorization any applicant seeking authority to provide international services from any region in the United States in which it has bottleneck control over local facilities. Such carriers may have the ability to leverage their control over local facilities to harm competition in the U.S. international services market. In these instances, parties should have an opportunity to comment on these carriers' 214 applications to address the unique competitive concerns that might arise.

II. FORBEARANCE FROM PRO FORMA ASSIGNMENTS AND TRANSFERS OF CONTROL

In the *Notice*, the Commission tentatively concludes that it should forebear from prior approval requirements for *pro forma* assignments and transfers of control of international Section

214 authorizations.[7] The Commission proposes using the standard set forth in its broadcast rules to define *pro forma* transactions.[8] MCI supports the Commission's tentative conclusion and proposals. Because *pro forma* transfers and assignments are by the Commission's definition non-substantial corporate changes, MCI agrees with the Commission that prior review of such transactions is not necessary to ensure that carriers' charges and practices are reasonable and non-discriminatory, to ensure protection of consumers, and to serve the public interest. MCI also agrees with the Commission that its proposal does not affect the requirement of prior review for any transaction that results in acquisition by a foreign carrier of more than 25 percent of an authorized carrier.[9]

III. PROVISION OF SERVICE BY WHOLLY-OWNED SUBSIDIARIES

The Commission proposes to amend Section 63.21 of its rules to provide that a 214 authorization effectively authorizes the carrier to provide services through its wholly-owned subsidiaries.[10] The Commission seeks comment on whether the amended rule implementing the proposal would defeat any of the Commission's structural separation requirements.[11]

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[7] *Notice* at ¶¶ 15-17. The Commission proposes to require that an authorized carrier that undertakes a *pro forma* assignment notify the Commission by letter within 30 days after consummation of the transaction, but does not require carriers to notify it of *pro forma* transfers of control. *Id.* at ¶¶ 19-20.

[8] *Id.* at ¶ 14 (identifying specific types of transactions that are considered "non-substantial").

[9] *See id.* at ¶ 18.

[10] *Id.* at ¶ 22.

[11] *Id.*

MCI supports this proposal because it will eliminate the need for authorized carriers from having to file separate 214 applications for each of its subsidiaries, and will reduce application processing burdens on the Commission. Furthermore, the Commission's amended rule, proposed section 63.21(i), effectively eliminates any conflict with the structural separations rule applicable to dominant international carriers. The Commission should, however, clarify how broadly its proposal would apply. The Commission's proposal would clearly allow any wholly-owned subsidiary of a Section 214 licensee to forego acquiring a separate 214 license. It is unclear whether the Commission intends its amended rule also to apply when a U.S. subsidiary of a foreign carrier has a 214 authorization, and another subsidiary of the same foreign carrier that is not separately authorized wishes to provide international services in the United States. The Commission should clarify that the not-previously-authorized subsidiary may provide service pursuant to the authorization of its authorized "sister" subsidiary.

IV. AUTHORIZATION FOR NON-U.S. AND U.S. SUBMARINE CABLES

The Commission proposes amending its rules to remove all non-U.S.-licensed cable systems from the exclusion list and to allow any facilities-based carrier to use any foreign cable system in its provision of U.S. international service.[12] The Commission states that if necessary, non-U.S.-licensed cables could be prohibited from use, but that it will do so only in the most imperative of circumstances and after seeking comments.[13] MCI agrees with the Commission

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[12] *Notice* at ¶ 25. The Commission also tentatively concludes that it should not modify its requirement to obtain specific 214 authority for use of all non-U.S.-licensed satellite systems. *Id.* at ¶ 28.

[13] *Id.* at ¶ 26.

that as competition increases in overseas markets, there will be more of a need to use non-U.S.-licensed submarine cables. The Commission should therefore adopt a presumption that authorized U.S. international carriers may use all non-U.S.-licensed submarine cables, and should place such cables on the exclusion list only in rare circumstances.

The Commission also tentatively concludes that there is no useful purpose served by requiring a previously authorized carrier to obtain specific Section 214 authority to construct a new undersea cable, in addition to obtaining a Cable Landing License.[14] It therefore proposes including the authorization to construct and operate new cables among the rights granted in all facilities-based Section 214 authorizations, thereby eliminating the need for additional Section 214 authorization when new undersea cables are constructed.[15]

MCI supports this proposal. Requiring previously authorized carriers to file separate Section 214 applications to construct and operate each new submarine cable is unnecessary and therefore does not further the public interest. The requirement that operators of new submarine cables must obtain a Cable Landing License provides the Commission with an adequate ability to determine whether construction and operation of a new submarine cable is in the public interest. Eliminating the additional Section 214 filing requirement will better serve the public interest by reducing burdens on applicants and on the Commission staff.

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[14] *Id.* at ¶ 29.

[15] *Id.* at ¶ 31. Any party seeking to construct an undersea cable landing in the United States would still be required to obtain a Cable Landing License.

V. REORGANIZATION OF PART 63 RULES

The Commission proposes amendments to reorganize and simplify Section 63.18 of its rules, which governs the contents of Section 214 applications.[16] MCI supports the reorganization of Section 63.18. The proposed amendments will make the requirements governing provision of international services significantly easier to understand.

MCI also supports the Commission's proposal to codify the settlement rate condition adopted in its *Benchmarks Order* that is applicable to facilities-based Section 214 authorizations.[17] Although codification would not substantively alter the requirement, codification demonstrates that the benchmark condition is a fundamental part of the Commission's foreign participation rules.

VI. AUTHORIZATION TO PROVIDE SWITCHED SERVICES OVER PRIVATE LINES BY DECLARATORY RULING

The Commission proposes a new rule allowing any authorized carrier to request a determination that U.S. carriers should be permitted to provide switched services over private lines to a particular country in a petition for declaratory ruling.[18]

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[16] *See id.* at ¶¶ 34-45.

[17] *Id.* at ¶ 37. *See International Settlement Rates,* Report and Order, 12 FCC Rcd 19806 (1997), *recon. and appeal pending ("Benchmarks Order")* at ¶¶ 195-231 (conditioning facilities-based Section 214 authorizations of foreign or foreign-affiliated carriers on their foreign-affiliates having in effect with U.S. carriers a settlement rate at the relevant benchmark).

[18] *Id.* at ¶ 41. Currently, a previously authorized carrier seeking authority to provide switched services over private lines to a specific country for which such service has not previously been authorized by the Commission must file a Section 214 application. Under the Commission's proposal, a new applicant for international Section 214 authorization still would be permitted to request such a determination in its 214 application.

MCI agrees that the ability to request a determination in a petition for declaratory ruling that switched services over private lines may be provided to a particular country would simplify the process of receiving such a determination. MCI submits, however, that the Commission could further streamline its authorizations to provide switched services over private lines to a particular category of countries. Specifically, the Commission should grant a blanket authorization to provide switched services over private lines between the United States and any WTO member country where at least 50 percent of the settled U.S.-billed traffic between the United States and that country are at or below the relevant settlement rate established in the *Benchmarks Order*. A country would become automatically authorized upon meeting the 50 percent benchmark settlement rate threshold. To keep the public apprised of the international routes on which switched services over private lines may be provided, the Commission could periodically release a list of approved destination countries.

VII. ELIMINATION OF REQUIREMENT FOR NOTIFICATION OF 10 PERCENT SHAREHOLDERS

In the *Foreign Participation Order*, the Commission increased from 10 percent to greater than 25 percent the level of investment in previously authorized carriers that must be reported to the Commission. The Commission tentatively concludes in the *Notice*, therefore, that it should eliminate the requirement that Section 214 applicants inform the Commission of every 10 percent or greater shareholder, and require only that applicants provide a list of every greater-than-25-percent shareholder in their Section 214 application.[19]

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[19] *Id.* at ¶ 39.

MCI opposes this proposal. MCI urges the Commission to continue to require each Section 214 applicant to list in its application every greater-than-10 percent shareholder. To do otherwise would significantly undermine an important Commission policy.

In the *Foreign Carrier Entry Order*, the Commission recognized that the potential exists for investments below the 25 percent level to have a dramatic impact on competition.[20] It stated that it therefore would scrutinize investments of 25 percent or less where the investment presents a significant potential impact on competition in the U.S. international services market. It also noted that this policy would make it more difficult to use corporate structuring tactics to evade Commission scrutiny.[21] The Commission explicitly reaffirmed this policy in the *Foreign Participation Order*.[22]

Eliminating the requirement to list shareholders of 25 percent or less would eviscerate the policy described above. Without such information, it would be extremely difficult for the Commission and other carriers to determine whether there are investments in a Section 214 applicant that are 25 percent or less but still substantial, *i.e.*, greater than 10 percent. Thus, foreign carrier investments that present a significant potential impact on competition in the U.S. international services market would likely go undetected.

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20 *Market Entry and Regulation of Foreign Affiliated Entities*, 11 FCC Rcd 3875 ("*Foreign Carrier Entry Order*") at ¶ 89.

21 *Id.*

22 *Foreign Participation Order* at ¶ 332, note 679.

On the other hand, the Commission's proposal would only marginally further its objective of reducing burdens on 214 applicants and the Commission staff. The requirement of providing one more piece of information that is readily available to the applicant in a 214 application, a list of 10 percent or greater shareholders, adds only a very marginal, if any, burden to preparing a 214 application.

Moreover, retaining the Section 214 application reporting requirement for 10 percent or greater shareholders is not inconsistent with the Commission's amendment of Section 63.11 to require previously authorized carriers to notify the Commission only in the event of a foreign investment of greater than 25 percent. There, the reduced burden justified the amendment. The Commission entirely eliminated a filing requirement for less than 25 percent investments. Here, the Commission would only be eliminating the requirement to provide one small piece of information, not the entire application filing requirement.

VIII. CONCLUSION

MCI applauds the Commission's efforts to simplify and streamline its international Section 214 requirements. As set forth herein, MCI supports all of the Commission's proposals, with one exception: that the Commission should retain the requirement that Section 214 applicants list all 10 percent or greater shareholders in their applications. MCI also urges the Commission not to extend blanket Section 214 authorization beyond non-foreign-affiliated carriers.

Respectfully submitted,

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August 13, 1998

CERTIFICATE OF SERVICE

I, Deborah Fairley, do hereby certify that on the 13th day of August, 1998, a true copy of the foregoing Comments was delivered, either by hand or First-Class mail, to the following:

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Washington, D.C. 20554

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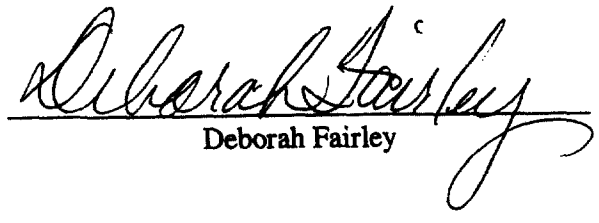

Deborah Fairley